

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOHN R. WALKER,

Petitioner

v.

C-1-01-848

JEFFREY A. WOLFE, Warden

Respondent

ORDER

This matter was referred pursuant to 28 U.S.C. § 636 to the United States Magistrate Judge for consideration and report on the Petition for Writ of Habeas Corpus filed by the petitioner pursuant to 28 U.S.C. § 2254. The matter is before the Court upon the Report and Recommendation of the Magistrate Judge (doc. no. 46) recommending that the Petition for Writ of Habeas Corpus be dismissed with prejudice. Neither party has objected.

Upon a *de novo* review of the record, the Court finds that the Magistrate Judge has accurately set forth the applicable law and has properly applied it to the particular facts of this case. Accordingly, in the absence of any objection by the parties, this Court accepts the Reports as uncontroverted.

Accordingly, the Court accepts the factual findings and legal reasoning of the Magistrate Judge and hereby **ADOPTS AND INCORPORATES** into this Order by reference his Report and Recommendation dated November 19, 2004 (doc. no. 46). The Petition for Writ of Habeas Corpus is **DISMISSED WITH PREJUDICE** as time-barred under 28 U.S.C. § 2244(d).

Pursuant to the Supreme Court's ruling in ***Slack v. McDaniel***, 529 U.S. 473, 484-85 (2000), this Court finds the petition states a colorable claim of a denial of a constitutional right and, therefore, that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right." ***Slack***, 529 U.S. at 484. In light of the evolving case-law interpreting and applying the one-year statute of limitations governing habeas corpus cases set forth in 28 U.S.C. § 2244(d), the Court further finds "jurists of reason would find it debatable whether this Court is correct in its procedural ruling" that the petition is barred from review on statute of limitations grounds. *Id.* Accordingly, a certificate of appealability should issue solely with respect to the issue addressed in this Order as to whether the petition is barred from review under § 2244(d). See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, this Court certifies pursuant to 28 U.S.C. § 1915(a), that an appeal of any Order adopting the Report and Recommendation would be taken in good faith and therefore **GRANTS** petitioner leave to appeal *in forma pauperis*. *See* Fed. R. App. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (1997).

IT IS SO ORDERED.

s/Herman J. Weber
Herman J. Weber, Senior Judge
United States District Court